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Visiting Sins upon the Innocent.—By DR. THEODORE C. FOOTE, of the Johns Hopkins University, Baltimore, Md.

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EVERY one is aware that the devout belief of Christendom until recent times has been that the innocent are punished by God for the sins of their ancestors. It is true that a way has been found of ameliorating the injustice by confining the visitation to hereditary ills, but this is modern. The great prominence that has been given to this belief is no doubt due to its expression in the second commandment of the Decalogue, which, strangely enough and quite significantly, has produced a much more marked impression on Christianity than it ever did upon Judaism.

It is my intention to treat this subject from a comparative and not a theological standpoint, and to call attention to a remarkable instance of a more advanced ethical concept yielding to an inferior one which thereupon dominates the subject for nearly twenty-five centuries.

The first mention of the innocent suffering for the guilty in Hebrew literature is found in Deut. 24, 16: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin."

Such a statute as this in an ancient code can hardly be without a history, which we have, unfortunately, little means of learning. It seems evident, however, that the Hebrews had encountered some custom of punishing the innocent with or for the guilty, and this clean-cut statement that "every man shall be put to death for his own sin," is the protest of a legislator whose ethical standard was far more just.

It may be taken for granted that the responsibility¹ (*rechts-verantwortlichkeit*) of the family or clan, of which Post cites so many instances among primitive peoples, obtained among the Canaanites of Palestine. Post says:² "*Die Haftung des Geschlechts für Rechtsbrüche seiner Genossen ist eine ganz universelle Erscheinung.*" He then cites authorities on the peoples of the Malay Archipelago, Polynesia, Mariana Islands, of the Caucasus, the Semites, Negroes, and various Aryan peoples.

We may then infer that among the Canaanites the primitive bloodfeud, which amounted to a state of war between different clans, passed, as among other peoples, into the blood revenge,³ which limited not only the causes that justified such revenge but also the persons who were allowed to participate in it. Müller points out⁴ that the Hammurabi code and the *Sepher Hammishpatim*, the so-called Book of the Covenant,⁵ both of which in his opinion depend on an older parent code, recognize the principle that the children are penally responsible (*strafrechtlich verantwortlich*) for the crime of their parents. In the Babylonian code this is a right, which in the Hebrew code is abrogated.⁶ It may be noted here that all the books I have seen dealing with Hebrew penal laws and ethnological jurisprudence know nothing of Biblical criticism and cannot treat the facts chronologically.

The passing of the blood revenge into the *lex talionis*⁶ was no doubt the removal of a terrible menace to life and liberty to many persons related to the guilty party, but at the same time it was probably not remarked that this movement towards mitigation of the harsher custom, worked a shocking cruelty in the case of innocent persons dying for the guilty. In most cases, it

¹ Saalschütz, p. 445.

³ Nöldeke in Mommsen, p. 82 ff.

⁵ Müller, p. 165 ff.

² Post, II, p. 225 f.

⁴ Müller, p. 168.

⁶ Müller, p. 227, pp. 222 ff.

may be hoped, the penalty was reduced to a fine.¹ There is probably little doubt that § 210 of the Hammurabi code,² which directs that in case a man has caused the death of a gentleman's daughter, his own daughter shall be put to death, was subject to composition; and the same may be said of § 230, where a builder's son is to be killed in case a house of the said builder falls and kills the owner's son. But nevertheless the principle of the substitution of the innocent for the guilty is plainly recognized.

This principle may also be traced in Ex. 21, 31.³ If a man's ox, known to be vicious, has killed a man or a woman, the owner's life is forfeited; but composition in the form of a ransom is allowed. Then vs. 31 reads: "Whether it have gored a son or have gored a daughter, according to this judgment shall it be done unto him"; which seems to imply that by some well known custom the owner's son or daughter would be forfeited; but this was not permitted among the Hebrews because a child cannot be put to death for a father. In the Hammurabi code⁴ the substitution of an undeveloped child or a useless old father, in case a man had killed a child or a father, was a softening of the harsher law requiring the death of the guilty person.

So far as I am aware, this is all that can be discovered of the penal laws of the Semites before the time of Deuteronomy.

The question now is, where are we to find the historical background for the statute in Deut. 24, 16: "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers; every man shall be put to death for his own sin."

On first thought it might seem to connect itself with the provision just referred to in the Hammurabi code allowing the substitution of a father or child for the guilty party, which would thus associate it with the *lex talionis*. But fortunately we have an interesting application of this law in 2 Ki. 14, 6, which seems to point to the period when blood revenge was the ruling penal principle and against which the Deuteronomic statute was directed.⁵ Amaziah, son of Joash, king of Judah, when well

¹ Wellhausen in Mommsen, p. 91 ff. ² Müller, p. 152.

³ Müller, p. 168.

⁴ Müller, p. 226.

⁵ Post II, p. 396 f.

established on the throne, put to death those of his subjects who had been guilty of the murder of his father, king Joash; but it especially noted that he did not kill the children of the murderers, because it was forbidden in the Book of the law of Moses, and the statute is then quoted. This is, of course, due to the Deuteronomic editor of the Books of Kings, and shows us that the idea of the statute was not to oppose a custom of substitution of children for fathers or fathers for children, but the right which was sanctioned by blood revenge, of exterminating the whole family of the guilty party. Saalschütz says:¹ "It was something quite common among ancient peoples, to punish not only the children but also the other relatives of the guilty party." He goes on to quote Potter on Grecian laws to the effect that this was done in case of political offenders in order to secure the state against traitors.² Instances of this motive as seen in Israelitish history will doubtless be called to mind. This explanation, however, does not apply in the case of the Deuteronomic statute, for the provision plainly rests on the ethical ground that it is intolerable to cause the innocent to suffer with the guilty. Nor is it to be explained by the idea of the scapegoat, nor is it a reaction against the excesses of personal revenge (cf. 2 Sa. 3, 28 f.).³ I find no other reason for the blood revenge being visited on the family of the transgressor than that of the solidarity of the related parties. There seems to have been an idea of infection which rendered it necessary to exterminate all those who were regarded as infected. However it may be explained, it is against this idea that any one else than the guilty one can be held guilty *because of blood relationship*, that the Deuteronomic statute was framed.

This principle, then, that the innocent shall not suffer for the guilty, which Duschak⁴ considers to be the foundation of Hebrew law, we find unequivocally stated as early as 621 B.C.

¹ Saalschütz, p. 445, and Potter, there referred to. See also: The *nexum* among Romans and Greeks, Kleineidam, pp. 52, 64. Mitteis, p. 358 ff. In Talmud, Rapaport § 16. Obligations for debt in India, Bühler, pp. 99, 147. For Greece, Swoboda, p. 214. Among primitive folk, Post, I, p. 365.

² Post, II, p. 323.

³ Förster, p. 30.

⁴ Duschak, p. 5.

It would be a great mistake, however, if we concluded that the promulgation of such a highly ethical statute was equivalent to the disappearance of the opposite view. The influence of the surrounding nations, on the contrary, continued to make itself felt on the Hebrew people. Instances, such as the murder of Naboth's children by the Tyrian Jezebel,¹ were probably not of infrequent occurrence, and the tendency was to bring into existence a proverbial expression of the principle that the innocent were answerable for the guilty: "The fathers have eaten sour grapes and the children's teeth are set on edge." An expression well adapted to convey the idea of sin infection among blood relatives.

But Jeremiah² (about 606 B.C.) takes his stand firmly on the Deuteronomic statute and looks forward to the day when the abhorrent doctrine should no more be heard. "In those days, they shall say no more, The fathers have eaten sour grapes and the children's teeth are set on edge. But every one shall die for his own iniquity; every man that eateth sour grapes, his teeth shall be set on edge."

The prophet Ezekiel, a dozen or more years later, utters a vigorous protest against the same doctrine, which had apparently gained strength through foreign influence. It is from him we learn that the doctrine is a foreign one and has no right to a place in Israel. "What do you mean," he indignantly exclaims, "by using this sour grape proverb *on Israelitish soil* (על ארמת ישראל)?" And Lord JHWH declares with an oath that this proverb should no more be used in Israel. The prophet then proceeds to teach the Deuteronomic statute, "The soul that sinneth it shall die; the son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son."³

Before we pass to the consideration of the postexilic teaching on this subject, we must examine two passages which belong to the older history of J and E, both of which seem to include the punishment of the innocent with the guilty. There are other references which are usually given on this subject

¹ 2 Ki. 9, 26; see Saalschütz, p. 446.

² Jer. 31, 29 f.

³ Cf. Ps. 137, 4, Is. 32, 13, Jer. 23, 8, Ezek. 12, 22.

⁴ Ezek. 18, 2, 3, 20.

that are not really pertinent, and will be treated in a note.¹ The two passages are the account of the vengeance on Korah, Dathan and Abiram in Num. 16, and on Achan in Josh. 7. In the latter case many explanations have been given to eliminate the injustice of Achan's family perishing with him.² Michaelis believes the children had sinned with the father; others, that they were only brought out to witness but not to share the execution. Maimonides (zu Sanhedrin, vi. 2), points out that Joshua's action against Achan was exceptional, since none should be condemned to death in consequence of his own confession or the declaration of a prophet. But it is not necessary to explain away difficulties which exist only as the result of later scribal expansion. It has been pointed out by Holzinger *in loco* that these additions in vv. 15 and 24 which include Achan's family, are inconsistent with the narrative in vs. 26, and are to be rejected. It may be noted that just such an expansion is to be found in Lev. 20, 5, which reads: "I will set my face against that man, and against his family, and will cut him off," etc.; where, as Bertholet has pointed out, "against his family" is a later addition. In the case of Korah, all the documents appear to narrate the destruction of the families, but here again the impression is due to just such expansions as are noted above. But if it were not due to later expansions, it is not strange that there should be, in the earliest traditions, some traces of the belief against which the Deuteronomic statute is evidently a protest.³

From the passages thus far considered it is clear that the only teaching that had any right in Israel was the Deuteronomic statute, and the contrary teaching is recognized as foreign and repudiated in the most unequivocal manner in the name of God himself.

¹ Several other passages, usually thought to refer to this subject, but really not pertinent, are as follows: In Lev. 20, 5, "against his family" is a gloss. Some passages refer to the guilt of the person punished, e. g. Lev. 26, 39 f., Ps. 79, 8 (read "former sins"), Ps. 109, 14. In Num. 14, 33, the reference is not to punishment. Job 5, 4, is not God's visiting. 1 Ki. 21, 29, seems to be an alteration due to the actual facts of the history. Jer. 11, 22, taken in connection with 31, 29 f., shows a coloring due to the late date of editing. See Cheyne, Black, E. B. col. 2377.

² Saalschütz, p. 445 f. Duschak, p. 5.

³ Förster, p. 30.

It remains to consider the passages bearing on this subject which show the trend of postexilic thought. We find that instead of the *fulfilment* of the prophecies of Jeremiah and Ezekiel, that the high ethical standard of the Deuteronomic statute would prevail over the lower standard of the surrounding nations, the very opposite happened; and we have an instance, which, as far as I know, is unique,¹ of a people who had adopted an advanced ethical principle and had been taught by two great prophets, speaking in the divine name, that the eternal Justice could not abide that the innocent should be punished for the guilty, yet who nullified their own legislation and adopted a foreign standard setting forth in the most solemn manner that the sins of the fathers would be visited on the children unto the third and fourth generation.² And what seems the more strange is that writers of the same Deuteronomic school, whose thought and literary expression are so familiar, should have become thorough converts to this doctrine and have interpolated into the earlier Scriptures, in at least four places, statements diametrically opposed to the Deuteronomic statute. I refer to the interpolations in the second commandment, Ex. 20, 5, Deut. 5, 9, and virtually the same words in Ex. 34, 7, and Num. 14, 18. The date of this revision we do not know, but it probably belongs to the period of the postexilic or second Deuteronomic editing of the Book of Kings.”³

The growth of this sentiment in prophetic literature seems to have begun at the close of the Exile. In Is. 14, 21, a passage that belongs to this period, in the triumph over Babylon, occur the words, “Prepare ye slaughter for the children for the iniquity of their fathers,” a wording which recalls the Deuteronomic statute at the same time that it reverses its sentiment. This can hardly be anything but the conscious adoption of a

¹ Westermarck in *The History of Human Marriage*, p. 68, gives instances of barbarous tribes retrograding in morals on contact with higher civilization. This is not parallel, but it suggests a possible reason for the back step of the Jews.

² Saalschütz, p. 446 f. The Rabbis apply the clause “that hate me” to the children. The fathers set a bad example which the children followed. But this clause is wanting in Ex. 34, 7, and Num. 14, 18, also in Is. 14, 21, and Lam. 5, 7.

³ See Burney, *Hebrew Text of Kings*, Introduction.

different ethical principle. A passage in Is. 65, 6 f., though not very clear, seems to breathe the same spirit. In Lam. 5, 7, which is not earlier than 470 B.C., we find the couplet, "Our fathers sinned and are not, and we have borne their iniquities." The sentiment is that of the second commandment.

Finally in Jeremiah 32, 18, about the time of Hyrcanus, we find יהוה appealed to as one who "recompenseth the iniquity of the fathers into the bosom of their children after them." A passage amply significant of the remarkable ethical change when compared with the true Jeremiah: "In those days they shall no more say, The fathers have eaten sour grapes and the children's teeth are set on edge."

The facts then are these. In the earlier times the influence of primitive modes of thought in the Hebrew people themselves, or the effect of contact with surrounding nations, may have led to instances of blood revenge of which the Song of Lamech may be an echo, and the rather uncertain account of the vengeance on Korah, Dathan and Abiram. But a healthier sentiment made itself felt in the time of Deuteronomy in a vigorous protest against the visiting of fathers' sins upon children or children's sins upon fathers; and the just statute that every one should die for his own sins became the basis of Hebrew penal law. The contrary opinion, however, refused to die¹ and is sternly repudiated by Jeremiah and Ezekiel and stamped as un-Israelitish. By the close of the captivity, nevertheless, the lower standard prevailed, it may be through Babylonian influence, and only a trace² is afterwards to be found of the early Deuteronomic legislation.

The later Jews seem to have developed still further the idea of sin infection, which may have been originally associated with blood revenge, and in the latest Books the belief in inherited sin as a result of Adam's³ disobedience paved the way for the Christian doctrine of original sin.

¹ We may infer from this that the Deuteronomic legislation failed to influence or represent the popular thought.

² Perhaps such may be seen in the quoting of Deut. 24, 16, in 2 Chron. 25, 4, and Job 21, 19 (in the Persian period?) shows a similar survival.

³ 1 Esdras, 8, 21.